WA 311/2004
BEFORE
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE H. BARUAH
JUDGMENT & ORDER
(CAV)

Amitava Roy, J

This adjudicative pursuit beholds a triangular orientation of competing assertions centering around the centuries old religious institution adorned by the globally reverred deity, Shri Shri Maa Kamakhya nestled in the verdant Nilachal Hills overseeing the mighty river Brahmaputra from its southern bank. The aforementioned appeals mount a challenge to the judgment and order dated 6.8.2004 rendered in WP(C) No. 5385/2000 along with WP(C) Nos. 6184/2000 and 2955/2002. The deity as well has been made to figure in the legal wrangle encompassed in WP(C) 935/2005 in a bid to nullify the provisions of the Assam State Acquisition of Lands Belonging to Religions or Charitable Institutions of Public Nature Act, 1959 (for short, hereinafter referred to as 'the Act') with its amendment in the year 1987 integrating Section 25A thereto. The constitutional validity of this enactment as a whole has been impeached.

2. Whereas the appellant in W.A. No. 311/2004 was the writ petitioner in WP(C) No. 5385/2000 representing himself to be an administrator of the Kamakhya Debutter (hereinafter also referred to as the Kamakhya Debutter Board/ Board), one Sri Kamal Chandra Sarma [petitioner No.1 in WP(C) 6184/2000] designating himself to be Chairman of the Board has lifted the cudgel against the aforementioned decision in W.A. No. 312/2004. In view of their interpositions, the petitioners(s)/ appellant(s) have been referred to hereinafter in the alternative.

3. We have heard Mr. DK Mishra, Senior Advocate assisted by Ms. S Jahan, Advocate for the petitioner in WP(C) No. 935/2005 as well as for the appellant in W.A. No. 312/2004; Mr AK Bhattacharjee, Senior Advocate assisted by Mr S Sarma, Advocate for the appellants in W.A. No. 311/2004; Mr AC Buragohain, Addl. Advocate General, Assam and Mr PS Deka, learned Govt. Advocate, Assam for the State respondents as well as Mr BC Das, Senior Advocate; Mr P Pathak, Senior Advocate, Mr. C.K. Sarma Baruah (since deceased) assisted by Mr S Shyam and Mr B Sarma, Advocates for the private respondents.

4. Before being enmeshed in the contentious pleadings, expedient it would be to briefly trace the overwhelming and phenomenal historical background of the hallowed site of international repute presided over for the time immemorial by the omnipotent deity Shri Shri Kamakhya. The factual backdrop is unquestioned and finds a felicitous and explorative narration in the judgment dated 25.2.1931 passed by the Special Sub Judge, Assam Valley Districts at Guwahati in Title Suit No. 45 of 1927. A skeletal reproduction therefrom with this acknowledgement would suffice the present endeavour.

5. From time immemorial their existed a pitha or jyonimudra (sacred sign/ emblem) of Goddess Shri Durga venerably known as Shri Kamakhya in the Nilachal Hills situated on the south bank of river Brahmaputra in the State of Assam. With this shrine as the principal deity, several other subsidiary pithas or shrines surfaced around it being located all over the aforenamed hill. The discovery of these pithas or shrines had been gradual with time. Mythology traces construction of the temples with walls and stone stairs uphill to the engineering feats of King Narakasura, thus, making the location known and accessible. After the vandalic invasion of the Kamakhya Hill by Kalapahar of Bengal, as the history testifies, the Koch Dynasty during its prime held its sway over the whole of Kamrup. It was King Naranarayana who then rebuilt the Kamakhya Temple and introduced a regular scheme of worship, thus, streamlining the then prevailing disorderly state of affairs. With the emergence of the Ahom regime, five upper districts i

n the Brahmaputra Valley including Kamrup with the Nilachal Hills came under its rule. Since then till the advent of British in Assam in 1826, the Ahom Kings controlled and supervised all the affairs of the Kamakya Institution which had developed into a Tirtha-a supreme site of divine abode and acknowledged as a Government institution. It constituted a public religious endowment with all properties appertaining to it to be held in trust. Teeming masses principally professing Hindu religion thronged the site for divine audience and making devotional offerings in the shape of Pranamees (fee), Naibaidya, Bhogh (cooked rice), fruits, sweets, clothes, ornaments, utensils etc.

6. History records that the Ahom Kings, their officers and agents constructed and repaired, to meet the growing exigencies, the main temple of Kamakhya and other subordinate temples and distributed vast stretches of immovable properties to ensure regular supply of all requisites for worship. Large number of Brahmins for higher religious services and non-Brahim Paiks for secondary/ subordinate services were also detailed. These Brahmin and non-Brahmin contingents comprised of Shebaits of this religious denomination. Whereas the Brahmin Shebaits for eliciting their services were separately granted land and other properties which devolved on their descendants, provision for maintenance of the non-Brahmins Shebaits out of the daily Bhoga (cooked offerings) in the temple and Naibadyas was made and in many cases separate endowments of land for enjoyment in lieu of the wages for the services to be rendered by them in the temples were accorded as well. Eventually the Brahmin donees held these lands as Brahmottar and Nisf Khiraj lands and the Paik donee families as Nisf Khiraj lands separately.

7. In addition, the Ahom kings used to appoint persons known as Seba Choloas for supervising the worship and other affairs relating to the temple and also for managing their properties. They, however, had no role in the internal management of the temples and the institution which rested in the principal families of priests generally known as Burpujaris, Bordeuris or Pandas. Though Seba Choloas continued to function as such for some time, the principal families of priests called Bordeuris gradually rose in prominence and ultimately became the accepted governors of the trusts.

8. The traditional practice among the Bordeuris was to elect one of them as a Doloi whose duty was to supervise the religious rites and the customary tenets in the temple.

9. With the adoption of the policy of non-interference with the Hindu religious institutions by the British, the Seba Choloas were superceded and the management of the affairs of the conglomerate of the divine institutions, both religious and secular, were left to the Dolois thereof who enjoyed the undisputed confidence of the Shebaits called the Bordeuris. This marked the supremacy of the Dolois as the manager of the trusts and endowments and they transacted all business on behalf of the temple under the Bordeuris, conceptually construed and styled as the Board of Trustees. In the above capacity, the Dolois inter alia used to lease out lands, conduct suits and perform all necessary acts on behalf of the temple. This arrangement sought to drive a wedge amongst the Shebaits as those who were not Bordeuris felt alienated from the realm of management of the temples. The simmering discontentment snowballed with time precipitating in confrontative dispositions and spate of litigations. The proceedings in hand testify the flashpoint of the lingering stand off.

10. Having scripted the historical backdrop of the Devalayas, the pleadings on record with the rival projections as essential to address the issues raised need be noticed. The constitutional validity of Section 25A of the Act had since been assailed before this Court in Civil Rule No. 3118/94 which, however, was negated by the judgment and order dated 2.5.2000. In terms thereof, the Deputy Commissioner, Kamrup, Guwahati passed an order dated 15.9.2000 constituting an ad-hoc Managing Committee under the above statutory provision. This order wa

s impugned in W.P.(C) Nos. 5385/2000 and 6184/2000 by Sri Riju Prasad Sarma intr oducing himself to be the administrator and a member of the Board of Trustees of the Kamakha Debutter and Sri Kamal Chandra Sarma also in the capacity of a memb er of the said entity. Interim orders were passed in the said proceedings author izing the Deputy Commissioner, Kamrup or his nominee, as the case may be, to dis charge the functions of the Managing Committee to be constituted under Section 2 5 A of the Act to have control over the matter of utilization of the annuity and verification of the proper maintenance of the institution till a regular Commit tee thereunder was formed. In compliance of such interim orders, the Deputy Comm issioner, Kamrup by his order dated 20.3.2002 appointed Sri S.K. Roy, Additional Deputy Commissioner, Kamrup to discharge the functions of the Managing Committe e. The aforenamed nominee, in turn, issued a notice proclaiming that the respons ibility of the Managing Committee of Kamakhya Devalaya would be taken over on an d from 26.4.2002. The fact of taking over such responsibility as notified was th ereafter conveyed by the notice dated 6.5.2002 by the nominee.

11. The orders dated 20.3.2002, 25.4.2002 and 6.5.2002 were impeache d in WP(C) No. 2955/2002 instituted by Sri Riju Prasad Sarma as above. This Cour t by order dated 13.5.2002 passed in WP(C) No. 2955/2002 directed that the respo ndents would not use the main 'Bharal' and the existing office of the Kamakhya D ebutter Board and further restrained them from interfering with the functioning of the sacred 'Peethas' of Jol Kuber and Dhan Kuber and 'all religious functions of the Kamakhya Temple'. By the judgment and order dated 6.8.2004 impugned in W .A. Nos. 311 and 312 of 2004, the learned Single Judge while disapproving the a rrangement sought to be effected by the order dated 15.9.2000, required the Stat e Government to take all follow-up steps necessary to constitute a regular Commi ttee in accordance with Section 25A of the Act within a period of three months.

12. The scheme effectuated by the interim orders dated 25.9.2000, 22 .11.2000 and 13.5.2002 passed by this Court in the above referred writ petitions were allowed to continue vis- -vis the administration of the secular affairs of the Devalaya till a regular Committee under Section 25A of the Act was constitu ted. Sri Riju Prasad Sarma, as the administrator, Kamakhya Debutter, representin g the deity Sri Sri Maa Kamakhya, a juristic person, has by laying a challenge t o the vires of the Act as a whole principally on the ground of lack of legislat ive competence, forged a new dimension to the existing protracted polemic. The p refatory facts, though overlap as the pleadings would display, bare essentials t hereof case-wise have to be essentially laid.

W.P.(C) No. 923/2005

13. The petitioner claims that the 'Peethas' located over the Nilach al Hill including that of Goddess Sri Sri Maa Kamakhya, have since been install ed as temples whereafter those were gifted with vast tracks of immovable propert ies by the Ahom kings for the maintenance thereof and also for ensuring regular supply of all requisites for 'Sevas' and 'Pujas' by a number of Brahmin and non-Brahmin Shebaits for carrying out different services in connection with religiou s activities. The properties were vested in the deity Sri Sri Maa Kamakhya as a juristic person. The lands received as gifts/ endowments by the deity were 'Debu tter properties' of the temple of the said Goddess and the services were to be r endered by a vast number of Shebaits like Pujaris comprising of the 'Buras' and 'Dekas', 'Hotas', 'Chandi Pathaks' and 'Bidhi Pathaks' who were assigned specifi c and distinct functions. The endowment of the Kamakhya Temple comprised of 31,0 00 Bighas of Lakheraj (revenue free) land in addition to Brahmottar land settled with the Shebaits and Paiks of the temple at a rate equal to half of the revenu e rate of the Kheraj leases. According to the petitioner, the endowment also com prised of Lakheraj land in the Nilachal Hills comprising of three hills of Bhuba

neswari, Kamakhya and Barah as well as Durga Sarovar comprising of an area of 25 65 Bigha, 3 Katha 19 Lechas which are revenue free. The Kamakhya temple has als o been stated to own immovable properties in the town of Guwahati measuring an a rea of 13 ‰ Lechas under Patta No. 1062 and 1 Katha, 17 Lechas under Patta No. 1 377 at Panbazar, Guwahati in the district of Kamrup.

14. The petitioner has denounced the Act as a legislation bereft of legislative competence of the State Legislature. The mandate of the Act to rende r the deity landless in purported attainment of the objectives thereof has been assailed to be beyond the purview of the State Legislature under Entry-42 of Lis t-II of the 7th Schedule to the Constitution of India. Without prejudice to this challenge, it has been asserted as well that the scheme prescribed by the Act f or the investiture of the land in the Government has not been complied with and , thus, the Notification under Section-3 thereof does not in any manner bestow t he lands in the State Government. Absolute denudation of the deity in the garb o f the impugned enactment by offering a paltry annuity without according compensa tion computed on the market value of the lands has also been contended as a grou nd to assail the process of acquisition.

15. Section 25A of the Act has been repudiated to be wholly extraneo us to the domain of the Act and visibly unconnected with the objectives thereof as recited in its preamble. This provision in particular has also been questione d for having been incorporated without prior recommendation of a fact finding co mmittee before seeking to take over the control of secular activities of a relig ious institution. That Section 25A as an integral part of the Act cannot be cons trued to be a law within the purview of Article 25(2)(a) of the Constitution of India has also been pleaded. It has been urged as well that Section 25A not bein g a part of a law enacted for the purpose of taking over the secular activities of the temple, it cannot be permitted to be invoked to interfere with the manage ment thereof.

16. The official respondents in their affidavit have, at the outset, questioned the locus standi of the petitioner to represent the deity. According to them, the Devalaya is managed and represented by the Dolois and the petition er as the administrator of Kamakhya Debutter, is not a legally recognized entity . They have averred that no organisation named Kamakahya Debutter has been recor ded as the manager of the Kamakha Devalaya in the existing land records. They ha ve averred that huge stretches of lands donated by various kings in the name of Kamakhya Devalaya were not utilized and could not be managed by the temple and, thus, remained unused and in the state of jungles. Referring to the land record s, the answering respondents have stated that out of the land acquired as a whol e, 21743 Bighas was Lakheraj, 1846 Bigha Nisf Kheraj and 1314 Kheraj. The Act ha s been endorsed to be a valid piece of legislation for land reforms and for dis tribution of land in favour of landless tenants. Asserting in favour of the legi slative competence of the State to enact the Act, the answering respondents have claimed successful implementation thereof contending that every year the State Government spends more that Rs. 50 Lakhs for payment of perpetual annuity to the concerned religious institution. That meanwhile the lands belonging to such 200 religious and charitable institutions have been acquired and distributed amongs t lakhs of tenants and landless persons has been pleaded. Tracing the power of l egislation of the enactment to Entry-18, List-II of the Schedule-7 to the Consti tution of India, the answering respondents have affirmed against imposition of u niform ceiling for all the institutions to obviate prejudicial consequences as t he land required by them would vary according to their needs. Payment of a sum o f Rs. 80,550/- at the rate of Rs. 3500/- per year by way of ad-interim compensat ion for a span of 23 years (1969-1991) has been stated. The assailment of Sectio n 25A of the Act has been sought to be warded off by falling back on the judgmen t and order dated 2.5.2000 rendered by this Court in WP(C) No. 3118/94.

17. The respondent No.5 as the representative of the Bordeuri Samaj,

Kamakhya Temple has substantially echoed the stand of the official respondents. Besides challenging the locus standi of the petitioner on the ground that he is not the head of the religious institution in terms of Section 2(2) of the Act, the answering respondent has asserted that the petitioner is not recognized as a n administrator of the Kamakya Devalaya. This respondent has maintained that all the lands and grants had been settled in the name of the then Doloi Ganga Prasa d Sarma and Pran Nath Sarma who had been duly appointed as such by the Bordeoris of the Kamakya Temple. According to this respondent, the lands are not held by the deity and it has no possessory right thereon as well as is testified by the decision rendered by the Special Sub Judge, Assam Valley District dated 25.2.193 1 in Title Suit No. 45/27. The validity of the Act has been ratified by this res pondent to be in furtherance of public interest. The answering respondent has st ated that though meanwhile an amount of Rs. 80,500/- by way of ad-interim compen sation has been paid at the rate of Rs. 3500/- per year under Section-9 of the A ct, compensation in the form of perpetual annuity over the acquired area could n ot be fixed for the failure on the part of the Head of the institution to submit return in Form-'C' as required under the Act and the Rules framed thereunder. I ncorporation of Section 25A by the amendment of the Act in 1987, according to th e respondents, has been made to strengthen the Managing Committee of the institu tion to have control over the matter of utilization of annuity and for verificat ion of proper maintenance of the institution.

18. In his reply, the petitioner has averred that though prior to th e year 1940 there used to 1/2 Dolois from amongst the family of only Bura and De ka, a new system was introduced since thereafter of appointing Dolois also from the families of Bidhipathaks and Hotas. The system continued till 1970 when it w as felt that the same was unworkable warranting a constitution to objectively re gulate the same. 'The Constitution for Management of Kamakya Temple Affairs in a Systematic Manner was formulated and eventually submitted before the learned D istrict Judge, Kamrup on 22.4.98. The petitioner has stated that on 25.10.98, a general meeting of the public comprising of Pandas, Pujaris and Purohits etc. an d other Brahmin and non-Brahmin shebaits of the temple was held in its precincts wherein a Regulation named as Kamakhya Debutter Regulation, 1998(for short, he reinafter referred to as 'the Regulation') was adopted for establishment of a Ge neral Board for managing the affairs of all kinds of properties of the Kamakhya Devalaya. Immediately thereafter a Board was constituted to manage the affairs of Kamakhya Devalaya in terms of Article 7 of the Regulation. The petitioner sta ted that this signalled the relinquishment of the earlier system of management. He pleaded further that apart from this constitution, there existed one more cha rter of identical kind framed in or about the year 1973 which too suggested abse nce of any custom governing the affairs of the Kamakhya Temple and instead ackno wledged practices and systems of practical relevance and significance to cater t o the exigencies of time. The constitution laid before the Court as above accord ing to the petitioner, effectively remedied the uncertain and indeterminate norm s of functioning to usher in an improved system of management of the religious i nstitution. The petitioner has, therefore, underlined that with the Regulation i n place, the management of the institution is being administered in accordance w ith democratic precepts by abandoning the then existing autocratic system confin ed to the four families led by the Dolois. The existing Doloi/ Chairman of Kamak hya Debutter having expressed his inability to continue in office vide his lette r dated 4.4.99 on health ground, the charge of the office of the Kamakha Debutte r Board was handed over to Paran Ch. Sarma (since deceased) and on the demise of the intermediate Chairman, Sri Kamal Ch. Sarma was appointed as such. The petit ioner has further asserted that since thereafter the Bordeuris are not the only persons who are entitled to hold the office of the Doloi and that the other Sheb aits too are equally qualified to assume the same. Relying on the determination made by the learned Single Judge in the judgment and order dated 6.8.2004 render ed, amongst others, in WP(C) No. 5385/2000, the petitioner has contended that th e issue of his locus standi is not longer res integra, the same having been deci ded in his favour therein. The petitioner has claimed that as permitted by the l

earned Single Judge, the administration of the temple is being managed and conducted by the Board as on date.

W.P.(C) No. 5385/2000

19. The writ petitioner, Sri Riju Prasad Sarma (appellant in W.A. No. 311/2004) has asseverated that being inspired by the judgment and order dated 2.5.2000 passed by this Court in C.R. Nos. 3118/94 and 6221/98, a handful of Shebaites belonging to only four families known as Bordeuris of Kamakhya Temple prevailed over the Deputy Commissioner, Kamrup, Guwahati to pass the order dated 15.9.2000 to constitute an ad-hoc Committee in utter violation of the letter and spirit of the decision. In endorsement of the plea of untenability of the order dated 15.9.000, the writ petitioner maintained that three persons, namely, Sri Sasikanta Sarma, Sri Tara Pada Sarma and Sri Jadu Nath Sarma had instituted a civil suit against Sri Jnanada Prasad Sarma and Sri Paran Ch. Sarma relating to the charge of the management of the Kamakhya Temple which was pending in the Court of the Civil Judge (Jr. Division) No.2, Kamrup at Guwahati.

20. It was asserted as well that in view of the pendency of WP(C) No. 2531/99 in which the Deputy Commissioner, Kamrup had been impleaded as respondent No.2 pertaining to the issue of settlement of land of the Kamakhya Temple, it was impracticable to hand over the charge of the administration thereof to a person against whom a litigation was pending. According to the petitioner, the State authority (respondent No.2) was not authorised to dissolve the existing Managing Committee as sought to be done by his aforementioned order. The petitioner asserted that in fact no Managing Committee existed to be dissolved and to the contrary the affairs of the Kamakhya Temple was, at the relevant time, being managed by the Board of Trustees constituted in accordance with the Regulation. While reiterating that the perpetual annuity to be paid to the management of the Kamakhya Devalaya had neither been fixed nor released, the background in which the old system of electing Dolois by a handful of privileged Shebaites has been dismissed was reiterated. The petitioner asserted that Section 25A of the Act can be enforced only on payment of the compensation to the religious institution concerned as provided under Section-7 thereof. The petitioner asserted as well that the impugned order which enjoined formation of an ad-hoc committee only by the Bordeuris from amongst the entire community of Brahmins and non-Brahmins Shebaites was visibly illegal and undemocratic as well. The order was challenged also on the ground of violation of the principles of natural justice, the same having been passed without affording any opportunity to the members of the existing Board of Trustees as well as the Shebaits who had instituted C.R. (PIL) No. 35/97 seeking implementation of Section 25A of the Act. The impugned order was also impeached to be transgressive of Article 25(2)(a) & (b) of the Constitution of India.

21. The respondent No.2 in his affidavit dismissed the Regulation claimed to have been adopted in a public meeting held on 25.10.98 as non-est sans legislative recognition. The answering respondent without prejudice to this stand, questioned the locus of the petitioner even in terms of Clause-15 & 38 of the Regulation contending that one of the Dolois as the Chairman of the Debutter in terms of Section 38 of the Regulation had expressed his willingness to relinquish the charge of his office to facilitate formation of the Managing Committee under Section 25A of the Act and justified the formation of the Ad-hoc Committee as a stopgap arrangement to look after the affairs of the temple till regular election was held as per this statutory provision. While iterating that Sri Jnanada Prasad Sarma as a Doloi of the Kamakhya Temple was the religious and temporal head thereof, the answering respondent clarified that the perpetual annuity of the institution could not be fixed as the concerned authority thereof did not submit the demand in Form-’C’ as required under Section-11 of the Act read with Rule

22. The petitioners representing the Board have assailed the order dated 15.9.2000 of the Deputy Commissioner, Kamrup constituting an ad-hoc Committee to administer the management of the temple till regular election is held for the constitution of the Managing Committee as per Section 25A of the Act and also directing thereby that the charge of the office of the Devalaya be handed over to it. Reiterating the framing of the Regulations nomenclatured as 'Kamakhya Debutter Regulations, 1998 in a public meeting held on 25.10.98 attended by all the Brahmin and non-Brahmin Shebaits of the Kamakhya Debutter and the constitution of the Board in terms of Article-7 thereof, the petitioners have asserted that as per Article-17 of the Regulations the term of the office of the Board is five years and, as such, it was functional on the date on which the impugned order was passed. The petitioners have asserted that following the dismissal of C.R. No. 3118/94 instituted on behalf of the Satradhikar of Bengana Ati Satra impugning the vires of Section 25A of the Act vide the judgment and order dated 2.5.2000 of this Court, a handful of Shebaites belonging to four families of Kamakhya Temple had influenced the Deputy Commissioner, Kamrup (respondent No.2) to pass the order dated 15.9.2000 in purported compliance of the said decision of this Court directing dissolution of the subsisting Managing Committee headed by Sri Jnanada Prasad Sarma and Sri Paran Ch. Sarma. It has been pleaded that as by the judgment and order dated 2.5.2000 the official respondents were neither permitted nor directed to dissolve the then existing Committee or to constitute any ad-hoc Managing Committee to manage the affairs of the Kamakhya Debutter, the impugned order was in contemptuous disregard thereto. The petitioners contended that the constitution of an ad-hoc Managing Committee was neither contemplated nor countenanced by the Act. The impugned order, thus, was assailed to be vitiated by lack of authority and genuineness of purpose besides being violative of the principles of natural justice as no opportunity of hearing had been accorded either to the Board or the petitioners.

23. The Commissioner and Secretary to the Govt. of Assam, Revenue Department in his counter while clarifying that the perpetual annuity of the Kamakahya Debutter had not been fixed as demand in Form-C to be submitted by it under the Act had not been furnished in time and that as a consequence the Government had sanctioned an ad-interim annuity at the rate of Rs. 3500/- per annum totalling Rs. 80,500/- for the period 1375 B.S. to 1397 B.S., asserted as well that the ad-interim annuity for the period thereafter could not be released for the failure of the Debutter to submit utilization certificate for the amounts already sanctioned. The deponent emphasized the need for constitution of a proper Managing Committee as contemplated under Section 25A of the Act in view of the failure of the two Dolois forming the Temple Committee/ Trust even after the expiry of its term of five years as well as for non-furnishing any account of the money received from the devotees and other sources for the religious institution. The deponent clarified that as a first step, a draft voters' list was to be prepared for finalizing the same after inviting objections, if any, and thereafter conduct election on the basis thereof. The answering respondent, therefore, emphasized on the necessity of the ad-hoc Committee for working out the said modalities for the implementation of the mandate of Section 25A of the Act.

24. The Deputy Commissioner, Kamrup (respondent No.2) while affirming the stand of the respondent No.1 as above pleaded in his affidavit that the ad-hoc Committee would complete the election within a period of one month facilitating the installation of a new Committee. The deponent reiterated that the purpose of constituting the ad-hoc Committee was to effectuate the election of the Managing Committee for the temple and the initiative was to gear up the essential steps contributing to that end. The answering respondent dismissed the Regulatio

ns as bereft of any significance or relevance for want of legislative concurrenc e. According to the answering respondent, the Bordeuris of the temple only have the right of voting in the election as envisaged in Section 25A. The following steps in succession encompassing the process of election were set out as compreh ended:

a) Proper publication of the list of Bordeuris of the Kamakhya Temple;
b) Publication of the final list of Bordeuris after receipt and disposal of claims/ objections.
c) Filing of nominations;
d) Scrutiny of nomination papers;
e) Holding of elections.

He underlined that the ad-hoc Committee had been constituted to pursue these steps in conformity with the letter and spirit of Section 25A. That the order dated 15.9.2000 was not inconsistent with the determination made vide the judgment and order dated 2.5.2000 rendered in C.R. No. 3118/94 was accented upon. The deponent stated that the Committee headed by Sri Gnanada Prasad Sarma had been formed in the year 1991-92 and that the formation of a new body was lo ng over due. As the existing Committee, did not allow constitution of a new body , many members of the Bordeuri Samaj requested the Government for its interventi on. The answering respondent also pleaded that Sri Gnanada Prasad Sarma, one of the Dolois of the existing Committee had also expressed his willingness to relin quish the charge of his office to pave the way for the formation of the Managing Committee under Section 25A.

25. In reply to the pleadings of the respondents as summarized herei nabove, the petitioners pleaded that the present management of the Kamakhya Debu tter is preparing to hold elections as per the Regulations and that the interfer ence of the respondent No.2 was, thus, wholly unwarranted. That the Board under the Regulations had taken sufficient care to ensure that the funds of the temple are not misutilised and misappropriated was iterated as well. They asserted tha t a Managing Committee under Section 25A of the Act can be constituted to have c ontrol over the utilization of the annuity if the land belonging to the religiou s institution is finally acquired and the amount of annuity payable is fixed for verification of proper maintenance of the institution. As the said process is s till incomplete, the constitution of the Managing Committee under Section 25A of the Act is impermissible. According to the petitioners, not only the Bordeuris of Kamakha Temple but even those of 'Nanaan' Devalayas and the Deoris have the r ight to vote and can be elected as ex-officio Secretary as envisaged in Section 25A. They have reiterated that the resident devotees comprising of Brahmin and n on-Brahmin Shebaits form the Electoral College under the Act. The act of handpic king respondent Nos. 3 to 8 as members of the ad-hoc Committee has also been imp eached. While denying the right in the four families of Bordeuris of Kamakya Tem ple only to elect a Doloi, the petitioners ascribed senility to Sri Gnanada Pras ad Sarma dis-entitlng him to continue either as a member or the Chairman of the Board under the Regulations. His willingness to hand over the charge of the offi ce of the Committee was thus rejected by the petitioners as of no import. The pe titioners claimed that after the dissolution of the Committee formed in the year 1991 headed by Gnanada Prasad Sarma (since deceased), the management of the Kam akhya Endowment was vested in the Board constituted under the Regulations, the t erm whereof on the date of passing of the order dated 15.9.2000 was yet to expir e.

W.P.(C) 2955/2002

26. The petitioner as the administrator of the Kamakhya Debutter on the same set of pleaded facts assailed the order dated 18/20.3.2002 of the Deput y Commissioner, Kamrup appointing the respondent No.3 to discharge the functions of the Managing Committee to be constituted under Section 25A of the Act till a

regular body thereudner was formed. The consequential notices dated 25.4.2002 a nd 6.5.2002 were also questioned as a corollary. As the averments contained in t he counters filed by the respondent Nos. 3 to 8 and the affidavit-in-reply filed by the petitioner do not disclose any new factual assertion, it is considered i nessential to traverse the same in details.

27. In the backdrop of the above matrix of pleadings, Mr Mishra has assiduously argued that the Act is repugnant to the constitutional scheme of agr arian reforms and is, thus, liable to be adjudged non-est and void in law. Refer ring to its Statement of Objects and Reasons, the learned senior counsel has urg ed that as the same suggests that the enactment is one for agrarian reforms, it to be valid has to essentially conform to the imperative features of a legislati on of the same genre. According to him, the scope of determination qua the chall enge made to the vires of he Act in the earlier round of litigation being totall y different, the present impugnment based on repugnancy to the constitutional sc heme of agrarian reforms is not barred. Mr. Mishra has insisted that the Act hav ing received the assent of the President though is protected under Article 31A o f the Constitution of India, it having been included in Schedule-9 thereof, the Amendment Act of 1987 having been assented to only by the Governor of Assam, is not entitled to any insulation from the impugnments otherwise recognizable in la w. Section 25A introduced by the Amendment Act of 1987, thus, does not enjoy the protective umbrage of Schedule-9 to the Constitution of India only on the groun d that the same has been eventually integrated into the Act, he urged. Such a pr otection is, thus, not automatic, he maintained. Even otherwise, the learned sen ior counsel argued that Section 25A is wholly unrelated to the professed object of the parent enactment and is, thus, on its face ultra vires the Act and is lia ble to be adjudged as such.

28. Referring to the Act as a whole without prejudice to the above, Mr Mishra has contended that in an enactment to secure agrarian reforms the righ t of the landlord, though may be modified and/or curtailed, cannot be annihilate d in full as unlike a law for acquisition of land, a token compensation by way o f annuity is granted therefor and the surplus land is distributed in furtherance of the objectives of the legislation. Mr. Mishra, thus, argued that any enactm ent proclaimed to be one for agrarian reforms must obligatorily comport to this abiding philosophy of the constitutional scheme, departure therefrom being antit hetic thereto. The learned senior counsel urged with reference to Entry-18 of Li st-II of Schedule-7 to the Constitution and Article 246(3) that the same enables the State legislature to make law for agrarian reforms and the same to be const itutionally valid has to compulsorily adhere to the inherent characteristics the reof, namely, curtailment of the right of the landlord with a ceiling thereof, i nvestiture of the excess land in the Government, acquisition or taking over poss ession thereof by the Government, payment of token compensation by way of annuit y and distribution of the excess land to the landless and needy. As the Act unde r impeachment though posed to be one for agrarian reforms is neither possessed o f these attributes nor provide therefor, it is vividly unconstitutional, null an d void, he pleaded.

29. Referring to Section 3,4,5, 18 and 19 in particular, the learned senior counsel has asserted that it is apparent therefrom that the Notification under Section 3 for the acquisition has to follow the procedure comprehended in Section 18, 19 and 20. As the Notification whereby the religious institution i s sought to be divested of its land as a whole had been issued before traversing the procedure compulsorily required to be undertaken under Section 18,19 and 20 of the Act, it is on that ground alone liable to be adjudged null and void. Tha t the petitioner’s assertion in WP(C) No. 935/2005 to this effect has remained u nrefuted was also underlined with reference to the relevant pleadings. According to Mr Mishra, the requirement of taking over of possession of the land by the j urisdictional Deputy Commissioner being a pre-condition for complete investiture thereof in a Government signifies the indispensability of the prior compliance

of Section 18, 19 and 20 and, thus, in view of the violation of the legislative scheme of the Act as well, the entire process is vitiated by an incurable illegality, he pleaded. In reiteration of his contention that a law contemplated under Entry-18 of Schedule-2 to the Constitution for agrarian reforms does not envisage total effacement of the rights of the landlord but at best curtailment thereof to the extent indispensable, Mr Mishra has urged that Section 4 and 5 being in obvious transgression of this constitutional grundnorm, the enactment as a whole is a fraud on the legislative power. The learned senior counsel argued that as the religious institution was beyond the purview of any ceiling law before the enactment of the impugned Act, the provisions contained therein to divest it of its rights in its lands and making it wholly dependent on Government annuity are wholly indefensible by any norm of legislative interpretation to save the same from the vice of unconstitutionality. Moreover, as most of the lands sought to be taken over are incapable of being utilized/ applied for land reforms or agrarian reforms, the Act is a purported legislation besides being incompatible with the constitutional model prescribed therefor. The learned senior counsel, however, has fairly contended that while the processes which have meanwhile attained finality ought not to be reversed, those contemplated vis- -vis the non-agricultural lands and other lands incapable of being used for agricultural purpose ought to be declared as invalid.

30. With specific reference to Section 25A, Mr Mishra has contended that as the same seeks to take control of the secular activities of the religious institution as contemplated under Article 25/26 of the Constitution of India, it is not only necessary to be comprehensive but also ought to be preceded by an exhaustive fact finding enquiry to adequately attend to the relevant facets thereof. As Section 25A has been enacted without undertaking such an exercise, on that ground as well, it is liable to be adjudged ultra vires the Constitution. In endorsement of this plea, the learned senior counsel in addition to judicial pronouncements also relied upon Article 26(d) of the Constitution of India.

31. Mr Mishra further urged that Section 25A suffers from the affliction of gross vagueness and uncertainty, inasmuch as, it does not provide any guideline whatsoever to conduct the process for election contemplated thereunder as well as the modalities vis- -vis the steps involved in such an exercise. As this provision has the potential of conferring arbitrary and unbridled power unlike similar enactments in force, the same is liable to be struck down as unconstitutional, he urged. He denounced the validity of the notice dated 9.10.2004 notifying the schedule for election of Doloi(s) in the exercise of the executive fiat of the jurisdictional Deputy Commissioner/ Sub Divisional Officer without any authority. To reinforce his argument, Mr Mishra has placed reliance on the following decisions:

i) 2000 (2) GLT 286, Satradhikar, Bengana Ati Satra & Anr. -vs- State of Assam
ii) AIR 1966 A&N 51, Jiten Ch. Sarma Doloi -vs- State of Assam & Ors.
iii) (1980) 4 SCC 716, S.S. Maiti -vs- Union of India
iv) AIR 1965 SC 845, Sajjan Singh -vs- Sate of Rajasthan
v) (1975) 1 SCC 696, Godavari Sugar Mills S.B. Kamble & Ors.
vi) AIR 1973 Gau 87, Hiranya Kr. Barthakur -vs- P.C. Saikia & Ors.
vii) (1983) 1 SCC 305, D.S. Nahara -vs- Union of India.
viii) (1985) 1 SCC 479, Lingappa Pochanna Appelwar -vs- State of Maharshtra & Anr.
ix) (1981) 2 SCC 362, Waman Rao & Anr. -vs- Union of India.
x) AIR 1959 ASSAM 147, Anil Kr. Bhattacharjee- D.C. & Collector & Anr.
xi) (2002) 8 SCC 106, N. Adithayan -vs- Travancore etc.
xii) AIR 1959 SC 519, Atmaram -vs- Sate of Punjab & Ors.
xiii) (1971) 2 SCC 893, Jagannath etc. -vs- The Authorised Officer, Land Reforms & Ors.
xiv) (1974) 2 SCC 253, Kh. Fida Ali & Ors. -vs- State of Jammu & Kashmir
xv) (1990) 4 SCC 102, Union Territory of Goa, Daman & Diu & Anr. -vs- Lakshm

ibai Narayan Patil & Ors.
xvi) (2009) 12 SCC 378, State of Orissa -vs- Harapriya Bisoi
xvii) (1999) 3 SCC 231, Omprakash Agarwal -vs- B. Behera & Anr.
xviii) (1967) SC 1643, C. Golak Nath & Ors. -vs- State of Punjab & Ors.
xix) (2007) 3 SCC 557, P.V. George & Anr. -vs- State of Kerala & Anr.
xx) (2002) 9 SCC 441, Sreedharan S. -vs- State of Karnataka & Anr.
xxi) (1997) 8 SCC 522, S.S. Bola & Anr. -vs- B.D. Sardana & Ors.
xxii) (2005) 5 SCC 420, Prof. Yashpal & Anr. -vs- State of Chattisgarh
xxiii) (2002) 8 SCC 228, Union of India & Anr. -vs- Shah Goverdhan L. Kabra Teachers' College.
xxiv) AIR 1941 Federal Court 47, A.L. subramaniyan Chettiar -vs- Muttuswami Goverdan.
xxv) (1996) 2 SCC 498, Pannalal Bansilal Pithi -vs- State of A.P. & Ors.
xxvi) (1997) 4 SCC 606, Shri Adi Visheswara etc. -vs- State of U.P & Ors.
xxvii) AIR 1967 SC 1427, S.G. Jaisinghani -vs- Union of India & Ors.
xxviii) (1974) 1 SCC 549, State of Punjab & Ors. -vs- Khan Chand
xxix) (1985) 1 SCC 234, State of Maharashtra -vs- Mr. Kamal etc.
xxx) (1996) 1 SCC 1, Harbilas Rai Bansal -vs- State of Punjab & Anr.
xxxi) (2005) 2 SCC 317, Subramanian Swamy (Dr.) -vs- Director, CBI & Ors.

32. Mr Bhattacharjee has submitted that as no annuity under the Act following the acquisition of the lands of the religious institution has been paid in full as on date, the State Government by no means can be allowed to control the affairs thereof. While submitting on instructions that his respondents are not averse to the election, the learned senior counsel insisted that the same, however, has to be strictly in accordance with law. He, however, pointed out that the judgment and order impugned in the instant appeals cannot be implemented in absence of Rules for actualizing the enjoinments of Section 25A. Mr Bhattacharjee endorsed the plea that Section 25A was alien to the setting of the Act projected as a legislation for land reforms. He also reiterated that this provision was inexplicably arid and, thus, capable of being abused. The learned senior counsel underlined that it was impermissible to form a regular Committee under Section 25 A as observed in the impugned judgment and order. Mr Bhattacharjee maintained that Section 25A does not satisfy the requirement(s) of Article 25(1)(a) of the Constitution of India and that the impugned notice of election is a wholly unauthorized and imperious initiative of the jurisdictional Deputy Commissioner.

33. Mr Das in reply to the above, has submitted that the Act as any other instrument of legislation enjoys a presumption of validity, more particularly, having regard to the avowed purpose thereof. The learned senior counsel pleaded that in assaying the provisions thereof, its background as well as societal exigencies and the measures to address the same ought not to be lost sight of. The Act being a post-constitutional law informed with the salutary goal of enhancing the quality of life of the citizenry in general through social and economic emancipation, the challenge to the validity thereof ought not to be lightly entertained. Contending that the challenge to the vires of the enactment is open only on two grounds, namely, lack of legislative competence and transgression of constitutional rights, Mr Das has urged that the impugned Act conforms to the constitutional ideology engrafted in Article 39(b) and (c) of the Constitution of India and is, thus, beyond reproach. He insisted that the impugned enactment is one to further land reforms which are not per se limited to the agrarian confines only and are extendable to the use of land for variety of purposes including industrialization. Mr Das dismissed the plea of total extinction of the rights of the landlord contending that the provision of the Act duly secure the right of the religious institution to possess, occupy and enjoy the lands which they would elect to retain. He referred to Section 3 and 5 of the Act to reinforce this contention.

34. Referring to Section 15 and 16 of the Act, the learned senior counsel also endorsed the validity thereof pleading that the manner of utilization

of the land acquired as envisaged therein was in full consonance with the notion of land reforms as known in law. While emphasizing that the Act was within the domain of Entry-18 of List-II of Schedule-7 to the Constitution of India, the learned senior counsel insisted that land as mentioned therein was not necessarily restricted to agricultural land and that land reforms comprehended, amongst others, establishment of industries, cooperative societies etc. He urged further that the legislative entries in the lists to Schedule-7 of the Constitution envision only the themes of the legislation and not the source of power thereof and pleaded that both the Act impugned as well as Section 25A had an exigent background therefor and that the plea to the contrary is wholly misleading. Drawing the attention of this Court to the fact that impugnment of Section 25A had once been examined by this Court and answered in the negative in Satradhikar, Bengana Ati Satra etc. (supra), the learned senior counsel maintained that successive assailments on fresh grounds are impermissible as the same would otherwise undermine the guarantee of finality of judicial verdicts. According to Mr Das, the perception of vagueness and indeterminability of Section 25A is wholly conjectural and the details of the steps for the elections as contemplated therein can be worked out if necessary on the basis of a consensus. He pointed out in this regard that the rigour of election law as in parliamentary and assembly elections need not necessary apply in the eventuality contemplated by Section 25A. he also distinguished the authorities cited by Mr Mishra and Mr Bhattacharjee and also drew sustenance for his arguments from the following decisions:-

i) AIR 1951 SC 41, Chairanjit Lal Choudhury -vs- Union of India & Ors.
ii) (1997) 2 SCC 453, State of Bihar & ors. -vs- Bihar Distillery Ltd. & Ors.
iii) (2008) 4 SCC 720, Govt. A.P. & Ors -vs- P. Laxmi Devi (Smt.)
iv) (2005) 10 SCC 110, State of W.B. -vs- Ashish Kr. Roy & Ors.
v) AIR 1975 SC 1193, Godavari Sugar Mills Ltd. -vs- S.B. Kamble & Ors.
vi) AIR 1967 SC 856, Ajit Singh -vs- State of Punjab & Ors.
vii) (1995) Supp. 2 SCC 394, Kanwarlal -vs- IInd Addl. D.J. Nainital & Ors.
viii) (1980) 3 SCC 719, Ambika Pd. Misra -vs- Sate of U.P .& Ors.
ix) AIR 1995 SC 142, Jijubhai Nanbhai Khachar -vs- State of Gujrat & Ors.
x) (2007) 6 SCC 236, Greater Bambay Cooop. Bank Ltd.-v-s United Yarn Tex. (P) & Ors.
xi) (1996) 3 SCC 709, State of A.P. -vs- McDowell & Co. & Ors.
xii) (2003) 5 SCC 239, State of W.B & Anr. -vs- E.I.T.A India Ltd. & Ors.

Reliance was also placed on paragraph- 436 of Constitutional Law of India-Seervai, 4th Edition.

35. Mr Sarma Baruah (since deceased) while adopting the arguments of Mr Das in general, had submitted that in the litigational background though challenge to the Act for want of legislative competence cannot be said to be barred, the validity of Section 25A having been upheld by this Court in Satradhikar, Bengana Ati Satra (supra), it is beyond the ken of the present impugnment. The learned counsel questioned the locus standi of the petitioner Riju Prasad Sarma to represent the deity and insisted that in terms of Section 2(d) of the Act only the Dolois were entitled to do so. He referred to the decision in Baroda Kanta Deba Sarma Deka Bordeuri & Anr. -vs- Bangshi nath Deba Sarma Bidhipatak Bardeuri & Ors., AIR 1940 CAL 269 which recognized the office of Doloiship and pleaded that a Doloi being the head of the institution as per the custom prevalent, only he in law can represent the deity. He also referred to the judgment and order dated 25.2.1931 in T.S. 45/1927, Jibanram Balikata & Ors. of Kamakhya -vs- Bistupr asad Sarma Daloi & Ors. of Ditto passed by the ld. Special Sub-Judge, Assam Valley Districts at Gauhati to underline that Bordeuris are the trustees of the religious institution and submitted that Section 25A did not seek to interfere with the religious activities of the temple.

36. Mr Pathak while adopting the arguments of Mr Das and Mr Sarma Baruah contended that Kamakhya Debutter had no legal status or entity in law. Trac

ing the history of the religious institution and, more particularly, the manner of election of Dolois as per the age old custom, the learned senior counsel pleaded that the five families of Bordeuris were the de facto trustees of the Kamakhya Endowment entrusted with the pious role of conducting secular and religious activities related thereto. According to Mr Pathak, the ostensible legal tussle is one for wresting the ultimate control of power to administer the secular and religious activities of the institution and that in public interest as well as in reverence to the religious sentiment of the innumerable devotees of the deity, elections in terms of the earlier practice ought to be conducted. According to him, neither the challenge to the validity of the Act or Section 25A thereof nor the legal issues raised really touch upon the election of Dolois essentially from the five families of Bordeuris as per the practice followed from the time immemorial. The learned senior counsel also referred to the judgment in Jibanram Balikata (supra) to be of determinative relevance in this regard.

37. Mr Buragohain, learned Addl. Advocate General, Assam while affirming that the impugned Act is within the ambit of Entry-18 of List-II of Schedule-7 to the Constitution, has asserted that the enactment was not an abrupt act of legislation but has been designed in the context of the prevalent land policy to acquire unutilized lands and distribute the same to the landless. He referred to the book- Land Laws of Assam by K.C. Mazumdar, J.N. Choudhury, G.C. Phukan to demonstrate the acquisition of similar lands of other religious institutions under the Act. Referring to the provisions of the impugned legislation, Mr Buragohain dismissed the challenge based on supposed extinction of right of the religious institution, contending that in terms thereof the land released by it (religious institution) had only been acquired and, thus, no ceiling on the area has been contemplated. Lack of any provision for ceiling of the land to be acquired, thus, is not a vitiating factor, he urged. While endorsing the validity of Section 25A, Mr Buragohian with reference to a copy of the Jamabandi relating to Fancy Bazar, Guwahati has argued that the lands located at that site and belonging to the religious institution still remain recorded in its name.

38. Mr Mishra in his reply has submitted that in the appeals filed by the petitioners in WP(C) No. 935/2005 the impugnment is against the finding ascribing a limited role to the Managing Committee under Section 25A of the Act vis- -vis the annuity paid. As the learned Single Judge had negated the challenge to the locus standi of the petitioner/ appellants, the same cannot be reopened, he maintained. The learned senior counsel has argued that the observations made by the learned Single Judge taking note of the transitional phases pertaining to the election of Dolois signify the discontinuance of the custom in connection therewith. Reliance was also placed on Para- 401 of Halsbury’s Laws of England(4th Edition) and the dictionary meaning of ’Legal Memory’ to neuter the claim of decisive significance of custom in the matter of elections. Mr Mishra also pleaded that the challenge to the Act and Section 25A cannot be debarred on the principle of res judicata as the parties involved and the issues raised are distinctly different from those in the earlier outings. The contention against permissibility of a challenge to a legislation on the ground that the parliament is supreme was also strongly refuted. The following decisions were relied upon in addition by Mr Mishra in support of his aforestated arguments:

i) AIR 1927 Privy Council 128, Radha Binode Mandal -vs-Shri Shri Gopal Jiu Thakur & Ors.
ii) AIR 1951 SC 458, Shankari Prasad Singh Deo -vs- Union of India & Ors.
iii) AIR 1965 SC 745, Powers, Privileges and Immunities of State Legislatures, Re.
iv) (2007) 3 SCC 184, Raja Ram Pal -vs- The Hon’ble Speaker, Lok Sabha & Ors.
v) (1988) 4 SCC 324, Accountant & Secretaries Services (P) Ltd. & Anr. -vs- Union of India.
vi) AIR 1955 SC 661, Bengal Immunity Compalt Ltd. -vs- State of Bihar & Ors.

39. We have lent our anxious consideration to the rival pleadings and the insightful arguments founded thereon. Certain fringe issues need be dealt with before adverting to the core aspects of the lingering slugfest.

40. The locus standi of the petitioner(s) in WP(C) Nos. 5385/2000, 6184/2000 and 2955/2002 has been questioned. On that anvil, the representation of the deity in WP(C) No. 923/2005 by the petitioner in WP(C) No. 5385/2000 has also been repudiated as wanting in authority. As would be apparent on the face of the records, whereas the petitioners in WP(C) Nos. 5385/2000 and 6184/2000 have described themselves to be the Administrator/ Chairman of the Board, the deity in WP(C) No. 923/2005 is represented by the petitioner in WP(C) No. 5385/2000 in the capacity of the administrator of the Board. Noticeably, the petitioners have not instituted the writ proceedings in a representative capacity on behalf of the Shebaits in general. The respondents have persistently dismissed the validity of the Regulation and consequently the legal status of the Board to permit such representation to enable the initiation of the lis on the issues seeking adjudication.

41. The Kamakhya endowment, as adverted to hereinbefore, personifies the supreme seat of divine abode of the deity, Ma Kamakhya and is acknowledged to be a Government institution. The records testify that it is a religious endowment of public nature with all its properties to be held in trust. The parties are not at issue that historically, as the chronicles of the contemporaneous judicial determinations evince, the traditional practice amongst the Bordeuris i.e. principal families of priests was to elect one of them as the Doloi whose duty was as to supervise the religious rites and the customary rituals in the temple. As per the policy of non-interference with the Hindu religious institutions by the British, both religious and secular affairs of the institution were left to the Dolois who enjoyed the unqualified confidence of the Shebaits called the Bordeuris.

42. The Dolois as the manager of the trust and endowment, thus, transacted all business on behalf of the temple under the Bordeuris. As the text of the decision dated 25.2.1931 rendered by the Court of the Special Sub-Judge, Assam Valley Districts, Guwahati in T.S. No. 45 of 1927 would reveal, the Bordeuris whose forefathers constituted the 5 principal families of priests attached to the main temple at Kamakhya were not only the de facto but also de jure trustees of the entire concern in the Kamakhya Scheme of endowment and the Dolois were really their agents or managers. The groups of these Bordeuris constituted the Board of Trustees or Governing Body who whom the Dolois were answerable to submit accounts. The Board was competent to dismiss a Doloi for incapacity and mismanagement and to reappoint another Doloi. As scripted therein, the preliminary and original donors and founders of the endowment had been old Assam Kings of the Ahom Dynasty. Referring to the decree of the Sadar Dewani Adalat of Calcutta, dated 1838, it was recorded therein that none of the other Brahmins at Kamakhya or elsewhere had any right, power or authority of even touching or handling the Goddess at Nilachal Kamakhya Temple proper. Besides, the ancient five houses of Pandas were hereditarily assigned the duty of conducting the worship (Sevapooja). These findings, as the judgments referred to would substantiate, are the conclusions culled from a series of judicial decisions on the related issues and most significantly have not as such been disputed by the petitioners apart from contending that the system of election of Dolois by the identified families of Bordeuris was consciously done away with in the year 1970 followed by the emergence of the Regulation in the year 1998 and the Board contemplated therein. It is, however, not the case of the petitioners that any election since then has been held.

43. The Title as well as the Preamble of the Act introduced the enactment to be one for the acquisition by the State all lands belonging to religiou

s or charitable institutions of public nature. The definition of 'head of a religious or charitable institution', 'institution', 'religious institution', 'religious or charitable institution of public nature' being of considerable significance, are quoted hereinbelow:

The Head of a religious or charitable institution in so far as it relates to the institution shall mean a person, by whatever designation known in whom the control and management of the properties of that institution is vested whether under the terms of any enactment or grant or usages relating to this institution or any scheme of management framed by a Court under sectin 92 of the Code of Civil Procedure, 1908 (Act V of 1908);

Institution means a religious or charitable institution of public nature including its branches, if any, established prior to the commencement of this Act and existing at the date of such commencement;

Religious Institution means an institution the primary purpose of which relate exclusively to religious teachings or worship or advancement of religious irrespective of denomination;

Religious or Charitable Institutions of Public Nature shall include Satras, Maths, public temples, public Wakfs (that is to say, Wakfs other than Wadk-alal-aulad) including public Mosques and Durgahs, Gurudwaras, churches or similar institutions or endowments for public purposes of charitable or religious nature. .

Section-3 contemplates a notification whereby the rights of the religious or charitable institution in the land acquired would thereafter vest in the State free from all encumbrances. Section-5 which confers a privilege to a religious or charitable institution to retain possession of its land as referred to therein even after the acquisition also does not refer to the deity. Compensation under Section-7 for the acquisition of land is payable to the religious or charitable institution concerned to be received by its Head. The Head of a religious or charitable institution, under Section-18 is required to submit to the Deputy Commissioner a return giving particulars of all lands sought to be retained under Section-5. The process of publication of the final statement of the land acquired and allowed to be retained as envisaged in Section-20 also postulates grant of opportunity only to the Head of the religious or charitable institution concerned of being heard.

44. In the scheme of the Act, therefore, neither the deity figures as the owner of the lands of the religious institution, nor has any other role been assigned to it thereunder. The organizational genome as existing on the date of the enactment was left intact.

45. Having regard to the background of the initiation of the present legal tussle, the challenge to be tenable in law has to be essentially either on behalf of the institution concerned in a representative capacity espousing the cause of the constituents thereof as a whole. The proceedings in hand are not in the nature of Public Interest Litigation. As the Act would suggest, the institution has to be represented by its head as defined in Section 2(d) i.e. a person in whom the control and management of the properties thereof is vested whether under the terms of any enactment or grant or usage relating thereto or any scheme of management framed by a Court under Section-92 of the Code of Civil Procedure, 1908. The petitioner(s), admittedly, do not satisfy any of these prescriptions. As alluded hereinabove, they are not before this Court as representatives of the Shebaits as a whole. They have clearly designated themselves to be the Administrator/ Chairman of the Board. That the Regulation framed by them is a scheme of management by a Court under Section-92 of the Code of Civil Procedure, 1908 is also not forthcoming.

46. The petitioner(s) to repel the assailment of their locus have brought on record a copy of the Constitution/ Regulation said to have been framed in the year 1970 in a general meeting of the Bordeuris of the temple along with an affidavit to that effect affirmed by three members of the Bordeuri family. An application dated 22.4.98 whereby the said Constitution had been laid in the Court of the District Judge, Kamrup, Guwahati has also been appended. This was followed by a prayer made by the Bordeuri Samaj seeking election to the Managing Committee which was resisted by 6 Dolois and others. In their petition seeking election, the Bordeuri Samaj averred that the prescribed term of five years of the then Managing Committee headed by Gnanada Prasad Sarma and Paran Ch. Sarma, Doloi s which had been constituted in the year 1992 having expired, fresh elections were called for. Refuting this stand, the then Managing Committee denied the existence of any scheme for holding elections or any fixed term of its office.

47. The learned District Judge, Kamrup, Guwahati by his order dated 21.10.98 taking note of Section 25A of the Act directed that a Managing Committee be formed thereunder by the Deputy Commissioner, Kamrup, Guwahati by dissolving the then existing Committee or to form an ad-hoc Committee from and amongst the Bordeuri Samaj till regular election was held after the disposal of the Public Interest Litigation i.e. Civil Rule (PIL) No. 35/97 then pending before this Court. The learned Court below in passing this order dealt with the constitution of the Kamakhya Temple brought on record as above. It observed with reference, amongst others, to the decree passed by the learned Second Addl. Judge, Assam Valley Districts on 2.1.1935 in Spl. Sub-Judge Title Suit No. 28/1932 that the persons who are entitled to vote for the election of the Bordeuris and Dolois were defined and that the Shebaits were not endowed with any form of voting to the Managing Committee of the Kamakhya Temple. That in this premise, the prayer of the Shebaits to include their names as voters to the Managing Committee had already been rejected on 12.6.98 was noted. The Constitution projecting the Shebaits as voters was, thus, rejected to be an invalid document. It was further recorded that the then existing Mana